

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF OKLAHOMA

NEIL SCHATTIN,

Plaintiff,

v.

DAL-ITALIA LLC,  
Wholly owned subsidiary of,  
MOHAWK INDUSTRIES, INC.,

Defendant.

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CIVIL ACTION NO.: 13-CV-00220-RAW

JURY TRIAL DEMANDED

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant, Dal-Italia LLC (“Defendant”), files this Notice of Removal and shows as follows:

**INTRODUCTION**

1. On or about December 5, 2011, Plaintiff, Neil Schattin (“Plaintiff”), filed this action in the District Court in Muskogee County, Oklahoma, entitled *Neil Schattin, Plaintiff, v. Dal-Italia LLC, a wholly owned subsidiary of Mohawk Industries, Inc., Defendant*, Case No. CJ-2011-00617 (“State Court Action”). Plaintiff served Defendant with the citation and Petition on or about April 29, 2013.

2. Plaintiff did not name any other defendants in the State Court Action. Defendant timely filed this Notice of Removal within the 30-day time period required by 28 U.S.C. § 1446(b).

3. In the Petition, Plaintiff alleges that Defendant’s conduct resulted in a violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. (“ADEA”), and in the Plaintiff’s severe emotional distress. (*See* Ex. C, Pet. ¶¶ 24, 26).

**BASIS FOR REMOVAL**

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1441 because Plaintiff alleges that Defendant's conduct violated his rights under the ADEA. As a result, a federal question exists in this action pursuant to 28 U.S.C. § 1331 because Plaintiff's claims arise under the laws of the United States.

5. Plaintiff's claims are removable, despite the fact that Plaintiff included a state law claim for intentional infliction of emotional distress. That is, this Court has supplemental jurisdiction over Plaintiff's claim for intentional infliction of emotional distress as it forms part of the same case or controversy. 28 U.S.C. §§ 1367(a).

6. Accordingly, this Court has subject matter jurisdiction under 28 U.S.C. § 1331, such that Defendant may remove this action. *See* 28 U.S.C. §§ 1441(a).

**PROCEDURAL STATEMENTS**

7. Venue is appropriate in this Court under 28 U.S.C. § 1441(a), because this district and division embrace the place in which the State Court Action is pending.

8. An index of all documents filed in the State Court Action with the date of filing is attached hereto as Exhibits A - C.

9. All pleadings, processes, orders, and other filings in the State Court Action, including the docket sheet, are attached to this Notice of Removal as required by 28 U.S.C. § 1446(a). (*See* Ex. A, Ex. B, and Ex. C.)

10. Defendant will promptly file a true and correct copy of this Notice of Removal with the Clerk of the District Court in Muskogee County, Oklahoma, as required by 28 U.S.C. §1446(d).

11. Written notice of the filing of this Notice of Removal has been or will be given to Plaintiff as required by law.

12. A completed Federal Civil Cover Sheet and the new civil case filing fee of \$400.00 accompany this Notice of Removal.

**NO WAIVER**

13. By filing this Notice of Removal, Defendant reserves its right either to answer the Complaint and/or assert any claims, defenses, or other motions, including, but not limited to, Rule 12 motions permitted by the Federal Rules of Civil Procedure.

**CONCLUSION**

14. For the foregoing reasons, Defendant respectfully requests that further proceedings in the State Court Action be discontinued and that this suit be removed to the United States District Court for the Eastern District of Oklahoma.

Dated: May 17, 2013

Respectfully submitted,

/s/ Lindsay J. McDowell

JO ANNE DEATON, OBA #5938

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ATTORNEYS FOR DEFENDANT,

DAL-ITALIA, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been sent via U.S. mail, to Counsel for Plaintiff, David Warta and Grant Jackson; Smolen Smolen & Roytman, PLLC; 701 S. Cincinnati Ave.; Tulsa, OK 74119 on this 17th day of May, 2013.

/s/ Lindsay J. McDowell

Jo Anne Deaton

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**INDEX OF STATE COURT DOCUMENTS**

The following documents are attached:

**Exhibit A:** Docket Sheet; 5/9/13

**Exhibit B:** Original Summons—Dal-Italia LLC; 3/22/13

**Exhibit C:** Plaintiff's Petition; 3/22/13

Dated: May 17, 2013

Respectfully submitted,

/s/ Lindsay J. McDowell

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